

# **EXHIBIT A**

## **EXCERPTS OF ADMINISTRATIVE SERVICES AGREEMENT BETWEEN WESTERN GROWERS AND ANTHEM January 1, 2017**

**ADMINISTRATIVE SERVICES AGREEMENT  
FOR JOINTLY ADMINISTERED ARRANGEMENTS**

This Administrative Services Agreement ("Agreement") is entered into by and between Western Growers Assurance Trust ("Trust"), Western Growers ("TPA") and Anthem Blue Cross Life and Health Insurance Company ("Anthem") and is effective as of January 1, 2017 upon the following terms and conditions:

1. Trust is the sponsor of a self-funded Group Health Plan (as defined below) providing, among other things, health care benefits to certain eligible Plan Subscribers and their qualified dependents.
2. Trust has contracted with TPA to administer portions of its Group Health Plan.
3. Trust desires to retain Anthem as an independent contractor to administer certain elements of Trust's Group Health Plan
4. Anthem desires to administer certain elements of Trust's Group Health Plan pursuant to the terms of this Agreement.
5. TPA desires to work with Anthem to administer certain elements of the health care benefits of Trust's Group Health Plan pursuant to the terms of this Agreement.
6. Anthem agrees to work with TPA to administer certain elements of the health care benefits of Trust's Group Health Plan pursuant to the terms of this Agreement.

In consideration of the promises and the mutual covenants contained in this Agreement, Anthem, TPA and Trust (the "Party" or "Parties" as appropriate) agree as follows:

**ARTICLE 1 - DEFINITIONS**

For purposes of this Agreement and any amendments, attachments or schedules to this Agreement, the following words and terms have the following meanings unless the context or use clearly indicates another meaning or intent:

**ADMINISTRATIVE SERVICES FEE.** The amount payable to Anthem in consideration of its administrative services and operating expenses as indicated in Section 3 of Schedule A, excluding any cost for stop loss insurance coverage or any other policy of insurance, if applicable. All additional charges not included in the Administrative Services Fee are specified elsewhere in this Agreement.

**AGREEMENT PERIOD.** The period of time indicated in Section 1 of Schedule A.

**ANTHEM AFFILIATE.** An entity controlling, under common control with or controlled by Anthem.

**BILLED CHARGES.** The amount that appears on a Member's Claim form (or other written notification acceptable to Anthem that Covered Services have been provided) as the Provider's charge for the services rendered to a Member, without any adjustment or reduction and irrespective of any applicable reimbursement arrangement with the Provider.

**BLUE CROSS BLUE SHIELD ASSOCIATION ("BCBSA").** An association of independent Blue Cross and Blue Shield companies.

**CLAIM.** Written or electronic notice of a request for reimbursement of any health care service or supply on a form acceptable to Anthem.

**CLAIMS RUNOUT SERVICES.** Processing and payment of Claims that are incurred but unreported and/or unpaid as of the date this Agreement terminates.

**COVERED SERVICE.** Any health care service or supply rendered to Members for which benefits are eligible for reimbursement pursuant to the terms of the applicable SPD.

**ERISA.** The Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

**GROUP HEALTH PLAN OR PLAN.** An employee welfare benefit plan (as defined in Section 3(1) of ERISA) established by Trust, in effect as of the Effective Date, as described in the Plan Documents, as they may be amended from time to time.

**INTER-PLAN ARRANGEMENTS.** Blue Cross and Blue Shield Association programs, including the BlueCard Program, where Anthem can process certain Claims for Covered Services received by Members, which may include accessing the reimbursement arrangement of a Provider that has contracted with another Blue Cross and/or Blue Shield plan.

**INVOICE DUE DATE.** The date on the invoice provided to Trust indicating when payment is due.

**MEMBER.** The individuals, including the Subscriber and his/her dependents, as defined in the SPD, who have satisfied the Plan eligibility requirements of Trust, applied for coverage, and been enrolled for Plan benefits.

**NETWORK PROVIDER.** A physician, health professional, hospital, pharmacy, or other individual, organization and/or facility that has entered into a contract, either directly or indirectly, with Anthem to provide Covered Services to Members through negotiated reimbursement arrangements

**PAID CLAIM.** The amount charged to Trust for Covered Services or services provided during the term of this Agreement and any Claims Runout Period. Paid Claims may also include any applicable surcharges assessed by a state or government agency and any applicable interest paid. In addition, Paid Claims shall be determined as follows:

1. Provider and Vendor Claims. Except as otherwise provided in this Agreement, Paid Claims shall mean the amount Anthem actually pays the Provider or Vendor without regard to: (i) whether Anthem reimburses such Provider or Vendor on a percentage of charges basis, a fixed payment basis, a global fee basis, single case rate, or other reimbursement methodology; (ii) whether such amount is more or less than the Provider's or Vendor's actual Billed Charges for a particular service or supply; or (iii) whether such payments are increased or decreased by the Provider's or Vendor's achievement of, or failure to achieve, certain specified goals, outcomes or standards adopted by Anthem.
2. Payment Innovation Programs. If a Provider or Vendor participates in any Anthem payment innovation program, excluding any programs described in paragraph 1 of this provision, in which performance incentives, rewards or bonuses are paid based on the achievement of cost, quality, efficiency, or service standards or metrics adopted by Anthem ("Payment Innovation Programs"), Paid Claims shall also include the amount of such payments to Providers or Vendors for these Payment Innovation Programs. Such payments may be charged to Trust on a per Claim, lump sum, per Subscriber, or per Member basis and shall be based on Anthem's predetermined methodology for such Payment Innovation Program, as may be amended from time to time. The total monies charged in advance to fund a Payment Innovation Program shall be actuarially determined as the amount necessary to fund the expected payments attributable to the Payment Innovation Program. Prior to its implementation, Anthem shall provide Trust with a description of the Payment Innovation Program, the methodology that will be utilized to charge the Fund, and any reconciliation process performed in connection with such program. Payments to Providers or Vendors under these Payment Innovation Programs shall not impact Member cost shares.
3. Fees Paid to Manage and/or Coordinate Care or Costs. Paid Claims may also include fees paid to Providers or Vendors for managing and/or coordinating the care or cost of care for designated Members.
4. Claims Payment Pursuant to any Judgment, Settlement, Legal or Administrative Proceeding. Paid Claims shall include any Claim amount paid as the result of a settlement, judgment, or legal, regulatory, or administrative proceeding brought against the Plan and/or Anthem, or otherwise agreed to by Anthem, with respect to the decisions made by Anthem regarding the coverage of or amounts paid for services under the terms of the Plan. Paid Claims also includes any amount paid as a result of Anthem's billing dispute resolution procedures with a Provider or Vendor. Any Claims paid pursuant to this provision will count towards any stop loss accumulators under a stop loss agreement with Anthem.
5. Claims Payment Pursuant to Inter-Plan Arrangements and Other BCBSA Programs. Paid Claims shall include any amount paid for Covered Services that are processed through Inter-Plan Arrangements or for any amounts paid for Covered Services provided through another BCBSA program (e.g., BCBSA Blue Distinction Centers for Transplant). More information about Inter-Plan Arrangements is found in the Inter-Plan Arrangements Schedule of this Agreement.

**PLAN DOCUMENTS.** The documents that set forth the terms of the Plan, and which include the Summary Plan Description.

**PROPRIETARY INFORMATION AND CONFIDENTIAL INFORMATION.** Trust's Proprietary Information is information about the systems, procedures, methodologies and practices used by Trust to run its operations and the Plan and other non-public information about Trust. TPA's Proprietary Information is information about the systems, procedures, methodologies and practices used by TPA to run its operations and the Plan and other non-public information about TPA. Anthem's Proprietary Information is non-public, trade secret, commercially valuable, or competitively sensitive information, or other material and information relating to the products, business, or activities of Anthem or an Anthem Affiliate, including but not limited to: (1) Information about Anthem's Provider networks, Provider negotiated fees, Provider discounts, and Provider contract terms; (2) information about the systems, procedures, methodologies, and practices used by Anthem and Anthem Affiliates in performing their services such as underwriting, Claims processing, Claims payment, and health care management activities; and (3) combinations of data elements that could enable information of this kind to be derived or calculated. Anthem's Confidential Information is information that Anthem or an Anthem Affiliate is obligated by law or contract to protect, including but not limited to: (1) Social Security numbers; (2) Provider tax identification numbers (TINs); (3) National Provider Identification Numbers (NPIs); (4) Provider names, Provider addresses, and other identifying information about Providers; and (5) drug enforcement administration (DEA) numbers, pharmacy numbers, and other identifying information about pharmacies.

**PROVIDER.** A duly licensed physician, health professional, hospital, pharmacy or other individual, organization and/or facility that provides health services or supplies within the scope of an applicable license and/or certification and meets any other requirements set forth in the SPD.

**SUBSCRIBER.** An employee or retiree or other eligible person (other than a dependent) who is enrolled in the Plan.

**SUMMARY PLAN DESCRIPTION ("SPD").** A document provided to Subscribers by Trust or its designee that describes the health care benefits available to Members under the Plan, their rights under the Plan and the obligations of the Plan.

**VENDOR.** A person or entity other than a Provider, including an Anthem Affiliate, that provides services or supplies pursuant to a contract with Anthem

## ARTICLE 2 - ADMINISTRATIVE SERVICES PROVIDED BY ANTHEM

- a. Anthem shall perform the following Claims administrative services:
  1. Price Claims received by Anthem and transmit them electronically to TPA to apply benefits and perform final Claims adjudication. If TPA receives a paper Claim form from a Provider, TPA shall send a letter to the Provider directing them to send the Claim to the Blue Cross or Blue Shield plan in their state.
  2. Disburse to Providers and Vendors payments that TPA determines to be due in accordance with the provisions of the SPD and that are not payable directly to a Member. TPA and Anthem acknowledge and understand that in certain cases Anthem will be disbursing to Providers who are not Network Providers. If the SPD or TPA's policies and procedures provide that a Claim will be paid directly to a Member instead of the Provider, TPA shall be responsible for paying the Member.
- b. Anthem shall perform recovery services as provided in Article 13.
- c. This provision is intentionally omitted.
- d. Anthem shall provide Members and potential Members access to an online directory of Providers contracted with Anthem ("Provider Directories"). Additionally, Anthem shall ensure that Members and potential Members have access to the InterPlan directory of Providers via a website sponsored by BCBSA.
- e. Trust agrees that the terms of the Plan will include provisions for supporting discretion in determining the direction of payment including, but not limited to, a provision prohibiting Members from assigning their rights to receive benefit payments, unless otherwise prohibited by applicable law.

- f. Anthem will provide Trust with Plan data and assistance necessary for preparation of the Plan's information returns and forms required by ERISA or other federal or state laws. Anthem shall prepare and mail all IRS Form 1099's and any other similar form that is given to Providers or brokers. Form 5500s and any other governmental filings are the sole responsibility of Trust or TPA; however, Anthem shall provide timely information and assistance, if requested. Anthem will disclose its fee and compensation information to Trust, as required by applicable law, for Trust to complete its Form 5500 and assess its compliance with section 408(b)(2) of ERISA and any applicable regulations promulgated thereunder. Summary annual reports shall be prepared by and mailed by, and are the sole responsibility of, Trust.
- g. Unless otherwise agreed to by the Parties and specified in the SPD, Anthem's standard policies and procedures, as well as Provider contracts, as they may be amended from time to time, will be used in the provision of services specified in this Agreement. In the event of any conflict between this Agreement and any of Anthem's policies and procedures, this Agreement will govern. In the event of any conflict between this Agreement and the Provider contracts, the Provider contracts will govern the rights and obligations as between the Parties and Providers.
- h. Anthem shall have the authority in its sole discretion, to build and maintain its Provider network on its own behalf. In building and maintaining its Provider network, Anthem is not acting on behalf of or as an agent for any plan sponsor or member. TPA and Trust are only entitled to receive a discount on a Claim from a Provider to the extent that Anthem can administer and receive a discount for that service for its other self-funded and fully insured business. Anthem will utilize its standard processes and procedures when processing Claims submitted by Providers, including, but not limited to, those involving the timely filing of Claims and Claim code editing and bundling. Nothing in this Agreement shall be interpreted to require Anthem to maintain negotiated fees or reimbursement arrangements or other relationships with certain Providers or Vendors or to negotiate on behalf of or for the benefit of Trust or Trust's Members. Anthem will be solely responsible for acting as a liaison with Providers including, but not limited to, responding to Provider inquiries, negotiating contract language and negotiating rates with Providers or auditing Providers and Trust agrees that it will be governed by the terms and conditions of these agreements.
- i. With respect to any Paid Claims paid to Providers by Anthem, Anthem shall administer unclaimed funds pursuant to unclaimed property or escheat laws and shall make any required payment and file any required reports under such laws.
- j. If applicable to the Plan benefits and as indicated in Section 3(B) of Schedule A of this Agreement, Anthem shall offer wellness programs and any other programs to help Trust effectively manage the cost of care, and Trust shall pay fees for the programs selected by Trust. Trust shall abide by all applicable policies and procedures of the programs selected, which may require Trust to provide requested information prior to Anthem initiating the service.
- k. If applicable to the Plan benefits and as indicated in Section 3(B) of Schedule A of this Agreement, Anthem may provide or arrange for the provision of the following managed care services, utilizing Anthem's medical policies:
  - 1. Conduct medical necessity review, utilization review, which may include, but is not limited to: (a) preadmission review to evaluate and determine the medical necessity of an admission or procedure and the appropriate level of care, and for an inpatient admission, to authorize an initial length of stay; (b) concurrent review throughout the course of the inpatient admission for authorization of additional days of care as warranted by the patient's medical condition and (c) retrospective review to evaluate and determine the medical necessity of an admission or procedure.
  - 2. Perform case management to identify short and long term treatment programs in cases of severe or chronic illness or injury.
  - 3. Provide access to a specialty network of Providers if the Plan includes a specialty network. Anthem reserves the right to establish specialty networks for certain specialty or referral care.
  - 4. Provide any other managed care services incident to or necessary for the performance of the services set forth in this Article 2.

5. If Trust delegates to Anthem fiduciary authority to determine appeals of any adverse benefit determination made by Anthem and to administer independent review requests related to those appeals, Anthem shall administer such appeals according to Anthem's complaint and appeals policy. All other appeals and their associated independent review requests not delegated to Anthem will be the responsibility of Trust. Anthem will charge Trust the fee indicated in Section 3(B) of Schedule A for any independent reviews conducted pursuant to this provision.

Trust delegates to Anthem fiduciary authority necessary for Anthem to perform the services under this Article 2(k). Anthem shall be deemed to have properly exercised its fiduciary authority under this Article 2(k) unless a Member proves that Anthem has abused its discretion or that its decision is arbitrary and capricious. Anthem is a fiduciary of the Plan only to the extent necessary to perform its obligations and duties as expressed in this Agreement and only to the extent that its performance of such actions constitutes fiduciary action. Anthem shall not act as administrator of the Plan nor shall it have any fiduciary responsibility in connection with any other element of the administration of the Plan.

- l. If indicated in Section 3(B) of Schedule A, Trust or TPA shall, at its expense, prepare and issue identification cards to each Subscriber who enrolls in the Plan, unless otherwise agreed upon by Anthem and Trust or TPA. Such identification cards shall be for the administration of Members' health care benefits under the Plan only and shall state that Anthem assumes no financial risk with respect to Claims. Anthem shall have the right to determine the form of such identification cards prior to issuance and Trust and TPA agree to include on such identification cards the information furnished or required by Anthem and the BCBSA.
- m. Anthem shall coordinate the filing of Paid Claims with the stop loss policy coverage issued by Anthem or an Anthem Affiliate. Anthem shall have no obligation to prepare or file any claim for excess risk or stop loss coverage under a policy not issued by Anthem or an Anthem Affiliate. If Anthem provides Utilization Management services under Article 2(k), Anthem shall provide Trust with Claims data pursuant to Article 11 of this Agreement if Trust chooses to file a claim under a stop loss policy issued by an entity other than Anthem or an Anthem Affiliate. Anthem shall assume no liability or responsibility to Trust for inconsistencies between the determination of Covered Services under the SPD and this Agreement and the determination of coverage by an unaffiliated stop loss carrier.

### ARTICLE 3 - OBLIGATIONS OF TRUST

- a. The TPA shall furnish to Anthem initial eligibility information regarding Members. Trust or TPA is responsible for enrolling Members, processing terminations, effecting COBRA coverage elections, effecting changes in single or family contract status, and effecting changes due to a Member becoming eligible or ineligible for Medicare. The TPA is responsible for determining eligibility of persons and advising Anthem in a timely manner, but no less often than monthly, through a method agreed upon by Anthem, including eligibility reports, electronic transmissions and individual applications, as to which individuals are to be enrolled as Members. Anthem reserves the right to limit the effective date of retroactive enrollment to a date not earlier than 60 days prior to the date notice is received. Such retroactive enrollments shall be subject to Anthem's receipt of any applicable fee, as indicated in Section 3 of Schedule A. The TPA shall keep such records and furnish to Anthem such notification and other information as may be required by Anthem for the purpose of Anthem's performance of its duties under this Agreement and determining the amount payable under this Agreement.

TPA shall notify Anthem monthly of the Subscribers, dependents, or other individuals that will be or have become ineligible for benefits under the Plan. Upon receipt of such notice, Anthem shall terminate coverage effective as of the date specified in the SPD. The TPA shall give Anthem advance notice, if possible, of any Member's expected termination and/or retirement. Anthem reserves the right to limit retroactive terminations to a maximum of 60 days prior to the date notice is received. Anthem shall credit Trust any applicable fees for such retroactive terminations as indicated in Section 3 of Schedule A.

If Anthem has paid Claims for persons no longer eligible for reasons including, but not limited to, Anthem having been provided inaccurate eligibility information, or Anthem having received notice of a retroactive change to enrollment, then Trust shall reimburse Anthem for all unrecovered Paid Claim amounts to the extent that the amounts have not already been paid by Trust.



- b. Trust acknowledges that it or its designee(s) serves as the "plan sponsor", "plan administrator" and "named fiduciary" as those terms are defined in ERISA. Trust has all the discretionary authority and control over the management of the Plan, and all discretionary authority and responsibility for the administration of the Plan except as delegated to Anthem pursuant to Article 2(k), or as otherwise delegated to TPA. Anthem does not serve either as "plan administrator" or as the Plan's "named fiduciary" and is not a fiduciary of the Plan. Trust retains all final authority and responsibility for the Plan and its operation.
- c. Trust or TPA, as designated in their administrative services agreement, is responsible for preparing and distributing all Member notifications that are required pursuant to state or federal law, including, but not limited to, Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Women's Health and Cancer Rights Act, the Newborns and Mothers Health Protection Act, certificates of creditable prescription drug coverage, and Massachusetts Health Care Reform Act notices.
- d. TPA shall adjudicate Claims with a Claim Incurred Date indicated in Section 1 of Schedule A, including investigating and reviewing such Claims to determine what amount, if any, is due and payable in accordance with the terms and conditions of the SPD and this Agreement. In adjudicating Claims, TPA shall have complete authority and responsibility for all benefit determinations and, except as delegated to Anthem pursuant to Article 2(j), TPA shall utilize its medical policy, utilization management and review policies, quality improvement policies and case management programs, policies and procedures. Following adjudication by TPA, the final approval or denial (including all applicable deductible and co-payment information and all limitations as outlined in the SPD) shall be forwarded by TPA to Anthem, in a HIPAA compliant format. TPA shall furnish explanations of benefits to Members and shall comply with any state or federal law that governs notices to Members when claims are denied. TPA shall perform the processing and resolution of all appeals by Members, except as delegated to Anthem pursuant to Article 2(k)
- e. TPA shall perform all Member customer service, education and correspondence, including, but not limited to, responding to all inquiries by Members regarding Claims for benefits under the Plan, except as delegated to Anthem pursuant to Article 2(k).
- f. Trust or its designee shall prepare and distribute SPDs, summary annual reports, and all notices or summaries of changes or material modifications to the Plan. Trust shall furnish Anthem with copies of any changes and amendments to the SPD at least 60 days prior to the effective date of such change or amendment.
- g. Trust shall give notice to Anthem of the expected occurrence of any of the following events (including a description of the event), with such notice to be given at least 30 days prior to the effective date of the event, unless such advance notice is prohibited by law or contract in which case, notice will be provided as soon as practicable:
  - 1. Change of TPA's or Trust's name;
  - 2. Any bankruptcy, receivership, insolvency or inability of Trust to pay its debts as they become due.
- h. TPA agrees to provide to Anthem the technical support necessary to assist in the implementation and maintenance required to support the terms of this Agreement. Such technical support shall be provided by TPA on an ongoing basis to ensure that technical contract compliance is consistent between TPA and Anthem. Without limiting the generality of the forgoing or Article 2(a), TPA shall utilize communication equipment, software, claims processing systems, and other systems that are able to coordinate with Anthem's systems, based on the formats, specifications and protocols established by Anthem from time to time.
- i. The TPA and Trust agree to be bound by the standards of performance described in Schedule B for all Claims processed under the terms of this Agreement and comply with any Inter-Plan Arrangements processing rules imposed by the BCBSA, as they may be amended from time to time. Anthem shall provide TPA and Trust with timely notification of any Inter-Plan Arrangements modifications that impact Trust's processing of Claims. If BCBSA modifies any Claim processing requirement described on Schedule B, Anthem reserves the right to unilaterally amend Schedule B, upon 30 days advance written notice.

- j. Trust and TPA shall comply with and satisfy all state and federal laws and regulations applicable to their respective obligations under this Agreement, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations.
- k. Trust may terminate this Agreement at any time other than at the end of an Agreement Period by giving Anthem 90 days written notice of its intent to terminate. If the Agreement terminates because Trust has terminated its relationship with TPA, but desires to continue this contractual arrangement with a different third party administrator, Anthem shall have the right to terminate this Agreement upon 30 days written notice if it does not consent to the change in third party administrators. Anthem will only consent to one change in third party administrators in a twelve month period. New third party administrators shall sign a confidentiality agreement prior to Anthem sharing any Plan information with the third party administrator. A new agreement between Trust, Anthem, and if applicable, the new third party administrator shall be entered into. In addition, Trust shall pay the transfer fee indicated in Section 3(B) of Schedule A. Claims runoff for the prior subcontractor shall be processed as described in Section 6 of this Agreement.
- l. TPA shall disburse to Members any payments that it determines to be Covered Services if such Covered Services are payable directly to a Member.
- m. Select states' laws require health plans to finance health related initiatives through residency-based assessments and/or surcharges added to certain Paid Claims. After Trust completes any applicable forms, Anthem shall make all assessment and/or surcharge payments on behalf of Trust to the appropriate pools administered by the respective states, based primarily upon Anthem's Paid Claims information and Member information provided to Anthem by Trust. Examples of such assessments and surcharges include but are not limited to, the Massachusetts Health Safety Net Trust Fund, the New York Health Care Reform Act and the Michigan Health Insurance Claims Assessment Act.
- n. Trust is the responsible reporting entity ("RRE") as that term is defined pursuant to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007. Trust shall comply with all applicable requirements of an RRE. Unless otherwise agreed to by Trust and TPA, Trust is the responsible reporting entity ("RRE") as that term is defined pursuant to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007. Trust shall comply with all applicable requirements of an RRE.
- o. If indicated in Section 3(B) of Schedule A, Trust or TPA shall, at Trust's expense, prepare and issue identification cards to each Subscriber who enrolls in the Plan, unless otherwise agreed upon by Anthem and Trust. Such identification cards shall be for the administration of Members' health care benefits under the Plan only and shall state that Anthem assumes no financial risk with respect to Claims. Anthem must approve the form of such identification cards prior to issuance and Trust or TPA shall include on such identification cards the information furnished or required by Anthem from time to time, including information necessary in Anthem's discretion to comply with policies and requirements of Anthem and the BCBSA.
- p. Trust is solely responsible for preparing and distributing the Plan's Summary of Benefits and Coverage to Subscribers.
- q. Plan agrees to and shall collect those contributions from Subscribers that are required by Plan for participation in the Plan. If Plan elects Anthem's stop loss coverage, Plan shall abide by Anthem's participation and contribution guidelines.

#### **ARTICLE 4 - CLAIMS PAYMENT METHOD**

- a. Trust shall pay or fund Paid Claims according to the Claims payment method described in Section 4 of Schedule A. Trust shall pay or fund such amounts by the Invoice Due Date. In addition, from time to time, the Parties acknowledge that Trust may request a review of the appropriateness of a Claim payment and, during the review period, Trust shall pay or fund such Claim.
- b. The Parties acknowledge that, from time to time, a Claims adjustment may be necessary as a result of coordination of benefits, subrogation, workers' compensation, other third party recoveries, payment errors and the like, and that the adjustment will take the form of a debit (for an additional amount paid by Anthem) or a credit (for an amount refunded to Trust). Any adjustment requested by Trust or TPA and related to an Inter-Plan Program or non-Network Provider Claim must be submitted to Anthem no later than 24 months from the original Claim processing date. Any Claim adjustment related to a Claim submitted by a Network



Provider shall be limited by Anthem to the lesser of 24 months or the adjustment time period specified in Anthem's contract with that Network Provider. The Parties agree that such Claims adjustment shall be treated as an adjustment to the Claims payment made in the billing period in which the adjustment occurs, rather than as a retroactive adjustment to the Claim in the billing period in which it was initially reported as paid. Any Claims credit may be reduced by a fee as indicated in Schedule A of this Agreement. In addition, a credit shall not be provided to Trust for a recovery related to a Claim that was covered under stop loss coverage provided by Anthem.

#### **ARTICLE 5 - ADMINISTRATIVE SERVICES FEES**

During the term of this Agreement, Trust shall pay Anthem the Administrative Services Fees, described in Section 3 of Schedule A. Trust shall pay the Administrative Services Fees and other fees authorized under this Agreement by the applicable Invoice Due Date according to the payment method described in Section 5 of Schedule A.

#### **ARTICLE 6 - TERM AND RENEWAL SCHEDULES**

- a. This Agreement will continue until terminated as provided in Article 19(b) or (c).
- b. If Anthem offers to renew this Agreement at the end of an Agreement Period, then Anthem shall provide Trust with the terms and conditions of the proposed renewal in writing within the time period provided in Section 1 of Schedule A. Trust shall notify Anthem in writing of its selection from the renewal options by indicating its selection and signing Anthem's designated renewal form. If Anthem does not receive a signed acceptance of the renewal from Trust prior to the start of the next Agreement Period, Trust's payment of the amounts set forth in the renewal shall constitute Trust's acceptance of the terms. Anthem shall provide a revised Schedule A that will become part of this Agreement without the necessity of securing Trust's signature.

#### **ARTICLE 7 - CLAIMS RUNOUT SERVICES**

- a. Claims Run-out Services shall be provided for the period of time provided in Section 6 of Schedule A (the "Claims Run-out Period"), unless termination is due to non-payment pursuant to Article 19(A) of this Agreement. During the Claims Run-out Period, the terms of this Agreement shall continue to apply. Anthem shall have no obligation to process or pay any Claims or forward Claims to Trust beyond the Claims Run-out Period. Any amounts recovered beyond the Claims Run-out Period shall be retained by Anthem as reasonable compensation for services under this Agreement. Anthem shall, however, return any recoveries for which Anthem had received monies, but had not processed the recovery prior to the end of the Claims Run-out Period. In addition, Trust shall have no obligation to reimburse Anthem for any amounts paid by Anthem due to adjustments to Claims after the end of the Claims Run-out Period.
- b. The Administrative Services Fee for the Claims Runout Period, if applicable, is provided in Section 6 of Schedule A. Paid Claims and the Administrative Services Fee shall be invoiced and paid in the same manner as provided in Sections 4 and 5 of Schedule A, unless otherwise provided or agreed to in writing by Trust and Anthem.

#### **ARTICLE 8 - LATE PAYMENT PENALTY**

If Trust fails to timely pay or fund any amount due to Anthem under this Agreement, Trust agrees to pay a late payment penalty for each day the payment is late. The late payment penalty shall be calculated at the rate of 12% simple interest per annum (365 days), and shall be included on a subsequent invoice and payable by the Invoice Due Date. In addition, Trust agrees to reimburse Anthem for any expenses charged to Anthem by a financial institution, Provider or Vendor due to Trust's failure to maintain sufficient funds in a designated bank account required under this Agreement. Any acceptance by Anthem of late payments shall not be deemed a waiver of its rights to terminate this Agreement for any future failure of Trust to make timely payments.

#### **ARTICLE 9 - HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

- a. Anthem's duties and responsibilities in connection with the requirements imposed by the Health Insurance Portability and Accountability Act ("HIPAA") and the privacy and security regulations promulgated thereunder will be set forth in a separate business associate agreement between Trust and Anthem.

- b. In the event the Plan submits Claims or eligibility inquiries or any other HIPAA covered transaction as defined in 45 CFR Part 160 and 162 to Anthem through electronic means, the Plan, Trust, TPA and Anthem shall comply with all applicable requirements of HIPAA and the Plan, Trust, TPA and Anthem shall require any of their respective agents or subcontractors to comply with all applicable requirements of HIPAA.

#### **ARTICLE 10 - PROPRIETARY AND CONFIDENTIAL INFORMATION**

- a. Each Party retains ownership of its Proprietary Information and Confidential Information (collectively "Information") and conveys no ownership rights in their respective Information nor acquires ownership rights in the other Parties' Information by entering into this Agreement or performing their respective obligations hereunder. Nothing in this Agreement shall impair or limit a Party's right to use and disclose its Information for its own lawful business purposes.
- b. Each Party shall maintain the other Parties' Information in strict confidence, and shall institute commercially reasonable safeguards to protect it.
- c. TPA and Trust shall use and disclose Anthem's Information solely for the purpose of administering the Plan. TPA and Trust shall not without Anthem's advance written consent, (1) use or disclose Anthem's Information, or reports or summaries thereof, for any purpose, other than administering the Plan; (2) combine Anthem's Information with other data to create or add to an aggregate database that will or could be made available to any third party; (3) combine Anthem's Information provided for a particular purpose with Anthem's Information provided for another purpose; or, (4) sell or disclose Anthem's Information to any other person or entity except as expressly permitted by this Article 10.
- d. TPA and Trust may disclose the minimum amount of Anthem's Information necessary to Trust's stop loss carriers, consultants, auditors, and other third parties engaged by Trust (each a "Plan Contractor") provided that: (1) each such third party needs to know such Information in order to provide services to Trust; (2) the restrictions set forth in Article 10 ( c ) shall apply to each such third party as well as to Trust; and (3) prior to such disclosure, each such third party shall enter into a confidentiality agreement (or an appropriate amendment to an existing one, as applicable) with Anthem with respect to the planned disclosure.
- e. Upon termination of this Agreement, each Party shall return or destroy the other Parties' Information or retain the Information in accordance with its reasonable record retention policies and procedures; provided, however that each Party shall continue to comply with the provisions of this Article 10 for as long as it retains the other Parties' Information.
- f. This Agreement shall not be construed to restrict the use or disclosure of information that: (1) is public knowledge other than as a result of a breach of this Agreement; (2) is independently developed by a Party not in violation of this Agreement; (3) is made available to a Party by any person other than the other Parties, provided the source of such information is not subject to any confidentiality obligations with respect to it; or, (4) is required to be disclosed pursuant to law, order, regulation or judicial or administrative process, but only to the extent of such required disclosures and after reasonable notice to the other Party.

#### **ARTICLE 11 - DATA REPORTS**

- a. Upon Trust's request and only as permitted by the business associate agreement entered into between Anthem and Trust, the Parties Anthem will provide Anthem's standard account reporting package. Prior to Anthem providing data or reports to Trust, Anthem and Trust the Parties must mutually agree to the types, format, content and purpose of the reports requested. If Trust requests from Anthem information that is not part of Anthem's standard account reporting package, and such request is approved by Anthem, Trust agrees to pay a mutually agreed upon charge to Anthem for such additional reports.

- b. If Trust requests Anthem to provide a data extract or report to any Plan Contractor, including TPA, for use on Trust's behalf and Anthem agrees to do so: (i) to the extent such extract or report includes protected health information ("PHI") as defined in HIPAA, Anthem's disclosure of the PHI and Plan Contractor's subsequent obligations with respect to the protection, use, and disclosure of the PHI will be governed by Trust's applicable business associate agreements with Anthem and the Plan Contractor; and (ii) to the extent such data or report includes Anthem's Proprietary Information and/or Anthem's Confidential Information, Trust acknowledges and agrees that Plan Contractor shall be subject to the restrictions set forth in Article 10 of this Agreement and shall enter into a confidentiality agreement with Anthem (or amend an existing one, as applicable) prior to Anthem's release of the extract or report.
- c. Trust and TPA agree not to contact, or to engage or permit a Plan Contractor to contact on Trust's or TPA's behalf, any health care provider concerning the information in any reports or data extracts provided by Anthem unless the contact is coordinated by Anthem.
- d. In addition to their unlimited rights to use Anthem's Proprietary Information and Confidential Information, Anthem and Anthem Affiliates shall also have the right to use and disclose other Claim-related data collected in the performance of services under this Agreement or any other agreement between the Parties, so long as: (1) the data is de-identified in a manner consistent with the requirements of HIPAA; or (2) the data is used or disclosed for research, health oversight activities, or other purposes permitted by law; or (3) a Member has consented to the release of his or her individually identifiable data. The data used or disclosed shall be used for a variety of lawful purposes including, but not limited to, research, monitoring, benchmarking and analysis of industry and health care trends. Anthem may receive remuneration for the data only if permitted by HIPAA.

#### **ARTICLE 12 - CLAIMS AUDIT**

- a. At Trust's expense, Trust shall have the right to audit the pricing of Claims on Anthem's premises, during regular business hours and in accordance with Anthem's audit policy, which may be revised from time to time. A copy of the audit policy shall be made available to Trust upon request.
- b. If Trust elects to utilize a third-party auditor to conduct an audit pursuant to this Agreement and Anthem's audit policy, such auditor must be mutually acceptable to Trust and Anthem. Anthem will only approve auditors that are independent and objective and will not approve auditors paid on a contingency fee or other similar basis. Anthem reserves the right to charge a fee to Trust for expenditure of time by Anthem's employees in completing any audit. An auditor or consultant must execute a confidentiality and indemnification agreement with Anthem pertaining to Anthem's Proprietary and Confidential Information prior to conducting an audit.
- c. Trust may conduct an audit once each calendar year and the audit may only relate to Claims processed during the current year or immediately preceding calendar year (the "Audit Period") and neither Trust nor anyone acting on Trust's or the Plan's behalf, shall have a right to audit Claims processed prior to the Audit Period. The scope of the audit shall be agreed to in writing by the Parties prior to the commencement of the audit.
- d. Trust shall provide to Anthem copies of all drafts, interim and/or final audit reports at such time as they are made available by the auditor or consultants to Trust. Any errors identified and/or amounts identified as owed to Trust as the result of the audit shall be subject to Anthem's review and approval prior to initiating any recoveries of Paid Claims pursuant to Article 13 of this Agreement. Anthem reserves the right to terminate any audit being performed by or for Trust if Anthem determines that the confidentiality of its information is not properly being maintained or if Anthem determines that Trust or auditor is not following Anthem audit policy.
- e. An audit performed pursuant to this Agreement shall be the final audit for the Audit Period and for any prior Audit Period unless otherwise agreed to in writing by the Parties; however, Claims may be re-audited if Trust is required to conduct the audit by a government agency with which it has a contractual arrangement.

**ARTICLE 13 - RECOVERY SERVICES**

- a. Pursuant to the provisions of this Article 13(a), Anthem shall review Paid Claims processed under this Agreement (including during any Claims Runout Period) to determine whether such claims have been paid accurately and identify recoveries that can be pursued. Fund will receive the entire amount of any recovery obtained on its behalf. In performing these recovery services, Anthem shall not be obligated to retain outside counsel or other third parties if Anthem's recovery efforts are not successful. The cost of these services provided by Anthem for recovery efforts under this Article 13(a) is included in Anthem's Administrative Services Fee, as set forth in Section 3(A) ("Base Administrative Services Fee") of Schedule A.
- b. Anthem may become aware of additional recovery opportunities by means other than reviewing Paid Claims processed under this Agreement. Trust grants Anthem the authority and discretion in those instances to do the following: (1) determine and take steps reasonably necessary and cost-effective to effect recovery; (2) select and retain outside counsel; (3) reduce any recovery obtained on behalf of the Plan by its proportionate share of the outside counsel fees and costs incurred during litigation or settlement activities to obtain such recovery; and (4) negotiate and effect any settlement of the Trust's and Plan's rights by, among other things, executing a release waiving the Trust's and Plan's rights to take any action inconsistent with the settlement.
- c. If indicated in Schedule A, during the term of this Agreement and any applicable Claims Run-out period, Anthem may pursue payments to Members by any other person, insurance company or other entity on account of any action, claim, request, demand, settlement, judgment, liability or expense that is related to a Claim for Covered Services ("Subrogation Services"). Anthem shall charge Trust a fee provided in Schedule A to this Agreement ("Subrogation Fee"). Any subrogation recoveries shall be net of the Subrogation Fee. Subrogation Fees will not be assessed on subrogation recoveries until they are received by Anthem and credited to Trust.
- d. If indicated in Schedule A, Anthem will engage third parties: (1) to conduct a review of Paid Claims processed under this Agreement and perform other recovery related services that are in addition to the standard recovery services provided under Article 13(a); and (2) to conduct audits of Provider and Vendor contracts. The purpose of these services is to determine whether Paid Claims processed under this Agreement have been paid accurately and, if they have not been paid accurately, to pursue recoveries. If Anthem makes a recovery as a result of the services described in this Article 13(d), then Anthem shall receive a fee provided in Schedule A as compensation for its services, a portion of which shall be paid to third parties for their services, and Trust will receive the remaining recovery amount.
- e. In exercising its authority pursuant to Articles 13(a) through (d), Anthem shall determine which recoveries it will pursue, and in no event will Anthem pursue a recovery if it reasonably believes that the cost of the collection is likely to exceed the recovery amount or if the recovery is prohibited by law or an agreement with a Provider or Vendor. Anthem will not be liable for any amounts it does not successfully recover. Anthem shall retain any recoveries it obtains as a result of its recovery services or audits if the cost to administer the refund is likely to exceed the amount of the refund. Trust further understands and agrees that Anthem shall have authority to enter into a settlement or compromise on behalf of the Trust and Plan regarding these recovery, subrogation and audit services, including, but not limited to, the right to reduce future reimbursement to Provider or Vendor in lieu of a lump sum settlement. Anthem may have contracts with Network Providers or Vendors or there may be judgments, orders, settlements, applicable laws or regulations that limit Anthem's right to make recoveries under certain circumstances. Anthem may, but is not required to, readjudicate Claims or adjust Members' cost share payments related to the recoveries made from a Provider or a Vendor. Anthem shall credit Trust net recovery amounts after deduction of fees and costs as set forth in this Article 13 not later than 150 days following the receipt of the total recovery amount. If Anthem does not credit Trust within 150 days of its receipt of the total recovery amount, Anthem shall pay Fund interest calculated at the Federal Reserve Funds Rate in effect at the time of the payment. In no event, however, will Anthem be liable to credit Trust for any recovery after the termination date of this Agreement and any Claims Runout Period, and Trust acknowledges and agrees that such sums shall be retained by Anthem as reasonable compensation for recovery services provided by Anthem.

**ARTICLE 14 - PHARMACY BENEFITS AND SERVICES**

This Article is intentionally omitted in its entirety.

#### ARTICLE 15 - INTER-PLAN ARRANGEMENTS

This Article is intentionally omitted and replaced by the Inter-Plan Arrangements Schedule.

#### ARTICLE 16 - CLAIMS LITIGATION

- a. Claims Against Anthem. Anthem shall defend against any legal action or proceeding brought against Anthem by a Member in connection with this Agreement. If a demand for benefits under the Plan is asserted, or litigation, investigation, or other proceedings are commenced against Anthem in connection with the Plan, Anthem shall provide notice to Trust as soon as practicable. In such instances, Trust will assume liability for payment of attorneys' fees and costs in connection with the litigation, proceeding, or investigation, including fees and costs incurred by Anthem, except as otherwise provided in Article 16(b). In the case of reimbursement disputes brought by Providers, Anthem will select and retain counsel and pays its related attorneys' fees.

Claims Against Anthem and Fund/Plan. If Fund or Plan are also named in the legal action or proceeding, Fund reserves the right to retain separate counsel for itself, in its sole discretion and at its own expense, and separate counsel for the Plan. If during such litigation, investigation or proceedings Fund and Anthem are both represented by the same counsel selected by Anthem and a conflict of interest arises, the selected counsel shall continue to represent Anthem's interests. Fund shall waive any conflict for such representation and retain its own counsel, or separate counsel for the Plan, at its own expense. Each Party will provide the other with reasonable cooperation in the defense of any such matter

Settlement of claims. Settlements of reimbursement disputes brought by Providers do not require the approval of Trust.

- b. Anthem is not an insurer of benefits under the Plan nor does it underwrite the risk or otherwise assume any risk for the payment of benefits under the Plan. Under all circumstances, Trust shall be liable to pay Plan benefits awarded or paid by settlement, judgment, or otherwise.
- c. In the event of any legal action or proceeding against TPA, Trust or Plan pertaining to Covered Services described in the SPD, Anthem shall make available to TPA, Trust, the Plan, and their respective counsel, such evidence that is not privileged or otherwise confidential and is relevant to such action or proceeding.

#### ARTICLE 17 - INDEMNIFICATION

Except for legal actions or proceedings seeking benefits under the Plan, which are governed by Article 16 of this Agreement, Anthem, TPA and Trust shall each indemnify, defend and hold harmless the other Parties, and their directors, officers, employees, agents and affiliates, from and against any and all losses, claims, damages, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and costs) arising from claims resulting from direct actions between the Parties or actions brought by a third party asserting liability for : (1) the indemnifying Party's or its subcontractor's gross negligence or willful misconduct in the performance of the obligations under this Agreement, and/or (2) the indemnifying Party's or its subcontractor's failure to provide information required under this Agreement or otherwise required by law that results in a sanction or penalty being assessed against the other Parties, and/or (3) the indemnifying Party's or its subcontractor's breach of fiduciary duties under ERISA. The obligation to provide indemnification under this Agreement shall be contingent upon the Party seeking indemnification: (i) providing the indemnifying Party with prompt written notice of any claim for which indemnification is sought, (ii) allowing the indemnifying Party to control the defense and settlement of such claim; provided, however, that the indemnifying Party agrees not to enter into any settlement or compromise of any claim or action in a manner that admits fault or imposes any restrictions or obligations on an indemnified Party without that indemnified Party's prior written consent, which will not be unreasonably withheld; and, (iii) cooperating fully with the indemnifying Party in connection with such defense and settlement.



**ARTICLE 18 - CHANGES TO AGREEMENT**

- a. Anthem reserves the right to change the Base Administrative Services Fee provided in Section 3(A) of Schedule A at a time other than the start of an Agreement Period if the number of Members or Subscribers, as applicable, at any time is less than the minimum number set forth in Section 3 of Schedule A. Anthem shall provide notice to Trust of the change in the Administrative Services Fee at least 90 days prior to the effective date of such change. If such change is unacceptable to Trust, either Anthem or Trust shall have the right to terminate this Agreement by giving written notice of termination to the other Parties before the effective date of the change. If Trust accepts the proposed Base Administrative Service Fee, Anthem shall provide a revised Schedule A that will then become part of this Agreement without the necessity of securing Trust's or TPA's signature on the Schedule.
- b. In the event any action of any department, branch or bureau of the federal, state or local government is initiated or taken ("Action") against a Party to this Agreement and such Action materially and adversely affects that Parties' performance of the obligations under this Agreement, the affected Party shall notify the other Parties of the nature of the Action and provide copies of pertinent documents supporting the reason(s) for the Action. If a modification to the Agreement is needed as a result of the Action, the Parties shall meet within 30 days of the notice by the affected Party to the other Parties and shall, in good faith, attempt to negotiate a modification to this Agreement that minimizes or eliminates the impact of the Action. If the Parties are unable to minimize or eliminate the impact of the Action, then any Party may terminate this Agreement by giving at least 90 days notice of termination. This Agreement may be terminated sooner if agreed to by the Parties or required by the government entity initiating or taking the Action.
- c. No modification or change in any provision of this Agreement, shall be effective unless and until approved in writing by an authorized representative of Anthem and evidenced by an amendment or new Schedule attached to this Agreement. If Anthem proposes such a modification or change, Anthem shall provide written notice to Trust at least thirty (30) days prior to the effective date of such change. The modification or change will be deemed accepted by Trust unless Anthem receives written notice from Trust prior to the effective date that such change is unacceptable. If Trust does not accept the proposed change, the Parties will meet and confer to reach agreement prior to implementation of such change.

**ARTICLE 19 - TERMINATION AND/OR SUSPENSION OF PERFORMANCE**

- a. Notwithstanding any other provision of this Article, this Agreement automatically terminates, without further notice or action, if Trust fails to pay or fund any amount due under this Agreement within 7 days of the date of Anthem's notice to Trust of a delinquent amount owed. Such termination shall be effective as of the last period for which full payment was made. In addition, this Agreement automatically terminates, without further notice or action, at the end of each Agreement Period unless Anthem offers to renew this Agreement and Trust accepts such offer of renewal pursuant to Article 6 of this Agreement. Upon termination of this Agreement, Trust shall remain liable for all payments due to Anthem under the terms of this Agreement. Notwithstanding the above, Anthem has the right to suspend performance of its obligations under this Agreement if full payment is not made by the Invoice Due Date. Anthem shall have no obligation to pay any Claims under the Agreement until all required payments have been paid in full.
- b. If any Party fails to comply with any material duties and obligations under this Agreement other than payment of amounts due under this Agreement, either of the other Parties shall have the right to: (1) terminate this Agreement by giving the other Parties at least 60 days prior written notice of termination; or (2) upon written notice to the other Party, suspend performance of its obligations under this Agreement. Trust and TPA acknowledge and agree that in the event Trust or TPA is the non-compliant Party, Anthem shall have no liability to any Member. Any compliant Party, at its option, may allow the non-compliant Party to cure a breach of this Agreement and, upon acceptance in writing by that Party that a breach is cured, this Agreement may be reinstated retroactive to the date of the breach or suspension of performance. Notwithstanding any other provision of this Agreement, a Party may seek injunctive or other equitable relief from a court of competent jurisdiction should there be any unauthorized use or disclosure of Proprietary Information or Confidential Information by another Party.
- c. If there shall occur any change in the condition (financial or otherwise) of Trust that, in the reasonable opinion of Anthem, has a material adverse effect upon the validity, performance, or enforceability of this Agreement, on the financial condition or business operation of Trust, or on the ability of Trust to fulfill its obligations under this Agreement, then Anthem shall have the right to require Trust to provide adequate



assurance of future performance, which may include a payment of a cash deposit, letter of credit, or other method of assurance acceptable to Anthem. Examples of such a change could include, but would not be limited to the actual, or Anthem's reasonable anticipation of: (1) any voluntary or involuntary case or proceedings under bankruptcy law with respect to Trust; (2) any receivership, liquidation, dissolution, reorganization or other similar case or proceeding with respect to Trust; (3) any appointment of a receiver, trustee, custodian, assignee, conservator or similar entity or official for Trust; or (4) any assignment for the benefit of creditors or sale of all or substantially all of Trust's assets.

Any deposit amount shall be paid to Anthem within 30 days of the request or in such shorter time as agreed to by Anthem and Trust. The deposit amount shall not be paid with Plan assets, shall not be funded in any part by Member contributions, and shall not be paid from any segregated fund or from funds in which the Plan or any Member has a beneficial interest. The deposit amount shall be the property of Anthem, may be held in Anthem's general account, may be subject to satisfy the claims of Anthem's general creditors, and does not govern or limit the benefits available under the terms of the Plan. At the termination of this Agreement and designated Claims Runout Period, if any, the deposit amount, net of any outstanding fees or Claims amounts payable to Anthem, shall be returned to Trust. Any deposit amount returned to Trust under this Article 19(c) shall not include interest. Neither Trust, Plan, nor any Member shall have any beneficial or legal ownership interest in any deposit amount paid pursuant to this Section.

If such further assurance is required by Anthem, Anthem may, at any time after the date of notice to Trust of such requirement, suspend performance of its obligations under this Agreement until the date of receipt by Anthem of such adequate assurance without being liable to Trust, Plan, TPA or any Member for such suspension. If such adequate assurance is not received within 30 days of the request, Anthem may terminate this Agreement.

- d. Trust or TPA may terminate this Agreement at any time other than at the end of an Agreement Period by giving the other Parties 90 days written notice of its intent to terminate.
- e. In connection with the termination of this Agreement and upon Trust's request, Anthem shall provide reports that are part of Anthem's standard account reporting package at no extra charge. In no event shall Anthem be obligated to produce more than two sets of reports following the termination date of this Agreement. However Anthem shall have no obligation to provide the reports after the termination date of this Agreement if such termination is due to non-payment pursuant to Article 19(a) of this Agreement. In addition, Anthem shall also provide data extract files upon Trust's request for an additional fee mutually agreed to by the Parties.

#### **ARTICLE 20 - LIMITATION ON ACTIONS AND GOVERNING LAW**

- a. No action by any Party alleging a breach of this Agreement may be commenced after the expiration of 3 years from the date on which the claim arose. Any disputes between the Parties in connection with this Agreement shall be resolved pursuant to Article 26 of this Agreement.
- b. Except to the extent preempted by ERISA or any other applicable provisions of federal law, this Agreement shall be governed by, and shall be construed in accordance with the laws of California but without giving effect to that state's rules governing conflict of laws.

#### **ARTICLE 21 - NO WAIVER**

No failure or delay by any Party to exercise any right or to enforce any obligation herein, and, no course of dealing between TPA, Trust or Anthem, shall operate as a waiver of such right or obligation or be construed as or constitute a waiver of the right to enforce or insist upon compliance with such right or obligation in the future. Any single or partial exercise of any right or failure to enforce any obligation shall not preclude any other or further exercise, or the right to exercise any other right or enforce any other obligation.

**ARTICLE 22 - ASSIGNMENT AND SUBCONTRACTING**

- a. Unless it has first obtained the written consent of an officer of the other Parties, no Party may assign this Agreement to any other person. Notwithstanding the foregoing, Anthem may, with advance written notice to Trust and TPA, assign or otherwise transfer its rights and obligations hereunder, in whole or in part, to: (i) any affiliate of Anthem; or (ii) any entity surviving a transaction involving the merger, acquisition, consolidation, or reorganization of Anthem, or in which all or substantially all of Anthem's assets are sold. Additionally, Trust and TPA may, with advance written notice to Anthem, assign, delegate, or otherwise transfer their respective rights and obligations hereunder, in whole, to any entity surviving a transaction involving the merger, acquisition, consolidation or reorganization of Trust or TPA, as applicable, or in which all or substantially all of Trust's or TPA's assets are sold, provided that such assignee presents, in Anthem's opinion, an equivalent or better financial status and credit risk. A Party is required to provide advance written notice under this provision only to the extent permissible under applicable law and the reasonable terms of the agreement(s) governing such merger, acquisition, consolidation, reorganization, or asset sale. If advance written notice is not allowed, notice shall be provided as soon as practicable. Upon receipt of notice of an assignment of this Agreement, either of the other Parties may terminate this Agreement by providing the other Parties, including the assigning Party with 30 days advance written notice of termination. Any assignee of rights or benefits under this Agreement shall be subject to all of the terms and provisions of this Agreement.
- b. Any Party may subcontract any of its duties under this Agreement without the prior written consent of other Parties; however, the Party subcontracting the services shall remain responsible for fulfilling its obligations in the same manner and extent as provided under this Agreement.

**ARTICLE 23 - NOTICES**

- a. Any notice or demand pursuant to Articles 19 and 22 of this Agreement shall be deemed sufficient when made in writing as follows: to Trust or TPA, by first class mail, personal delivery, or electronic mail or overnight delivery with confirmation capability, to its principal office shown upon the records of Anthem; to Anthem, by first class mail, personal delivery, electronic mail or overnight delivery with confirmation capability, to the designated Anthem sales representative.
- b. A notice or demand shall be deemed to have been given as of the date of deposit in the United States mail with postage prepaid or, in the case of delivery other than by mail, on the date of actual delivery at the appropriate address.
- c. Trust shall be obligated to provide all notices to Members as may be necessary to effectuate any change in or termination of the Agreement.

**ARTICLE 24 - ADMINISTRATION**

- a. Trust, on behalf of itself and its Members, and TPA, on behalf of itself, hereby expressly acknowledges its understanding that this Agreement constitutes a contract solely with Anthem, that Anthem is an independent corporation operating under a license with BCBSA permitting Anthem to use the Blue Cross Service Mark in California and that Anthem is not contracting as the agent of BCBSA. Trust and TPA further acknowledge and agree that they have not entered into this Agreement based upon representations by any person other than Anthem and that no person, entity, or organization other than Anthem shall be held accountable or liable to it for any of Anthem's obligations to Trust or TPA created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Anthem other than those obligations created under other provisions of this Agreement.
- b. Anthem is providing administrative services only with respect to the portion of the Plan described in the SPD. Anthem has only the authority granted it pursuant to this Agreement. Anthem is not the insurer or underwriter of any portion of the Plan. Anthem has no responsibility or liability for funding benefits provided by the Plan, notwithstanding any advances that might be made by Anthem. Trust retains the ultimate responsibility and liability for all benefits and expenses incident to the Plan, including but not limited to, any applicable taxes that might be imposed relating to the Plan.

- c. The Parties acknowledge that the portion of the Plan described in the SPD is a self-funded plan and is not subject to state insurance laws or regulations.
- d. Trust shall ensure that sufficient amounts are available to cover Claims payments, the monthly Administrative Services Fees, and other fees or charges.

#### **ARTICLE 25 - ENTIRE AGREEMENT**

- a. The following documents will constitute the entire Agreement between the Parties: this Agreement, including any amendments and Schedules thereto, and the SPD.
- b. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- c. This Agreement supersedes any and all prior agreements between the Parties, whether written or oral, and other documents, if any, addressing the subject matter contained in this Agreement.
- d. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under applicable law, order, judgment or settlement, such provision shall be excluded from the Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

#### **ARTICLE 26 - DISPUTE RESOLUTION**

- a. All disputes between Anthem, Trust or TPA arising out of or related in any manner to this Agreement shall be resolved using the dispute resolution and arbitration procedures set forth below. To invoke the dispute resolution procedures in this Agreement, a Party first shall send to the other Parties a written demand letter that contains a detailed description of the dispute and underlying facts. The Parties shall then meet and confer in person in a good faith effort to resolve the dispute.
- b. Subject to the limitations set forth in Article 26(c), any dispute that remains unresolved after the Parties met and conferred shall be resolved by final and binding arbitration conducted pursuant to the JAMS Comprehensive Arbitration Rules and Procedures. The arbitration shall take place in Los Angeles County, California.
- c. Notwithstanding the provisions of Article 26(b), the following disputes shall not be resolved through binding arbitration but, instead, shall be resolved through litigation filed in a court of competent jurisdiction or, where applicable, through an administrative proceeding before a state or federal regulatory authority:
  - 1. All disputes where the amount in controversy, exclusive of claimed interest, costs and attorneys' fees, is one million dollars (\$1,000,000.00) or greater;
  - 2. All disputes in which a Party seeks injunctive relief;
  - 3. All disputes in which Trust or TPA seeks to participate as a member of a class of claimants. For any dispute that is the subject of arbitration, the Parties waive any right to join or consolidate claims in arbitration on a class basis; and
  - 4. All disputes that are required by law to be resolved by a state or federal regulatory authority
- d. For disputes subject to arbitration, the dispute shall be decided by a single arbitrator selected, and replaced when required, in the manner described in the JAMS Comprehensive Arbitration Rules and Procedures. Each Party shall bear its own costs, including attorneys' fees, incurred in connection with the arbitration. Costs of the arbitration proceeding, including JAMS administrative fees and the arbitrator's fees, shall be shared equally between the Parties. Judgment upon the award rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction.

**ARTICLE 27 - MISCELLANEOUS**

- a. Trust, TPA and Anthem are separate legal entities. Anthem is strictly an independent contractor. Nothing contained in this Agreement shall cause any Party to be deemed a partner, member, agent or representative of the other Parties, nor shall any Party have the expressed or implied right or authority to assume or create any obligation on behalf of or in the name of the other Parties through its actions, omissions or representations.
- b. Except as may be explicitly set forth in this Agreement, nothing herein shall be construed as an implied license by a Party to use the other Parties' name, trademarks, domain names, or other intellectual property. No Party shall use the name, trademarks, domain names, or any other name or mark of the other Parties in any press release, printed form, advertising or promotional materials or otherwise, without the prior written consent of the affected Party. In addition, Trust and TPA have no license to use the Blue Cross and/or Blue Shield trademarks or derivative marks (the "Brands") and nothing in the Agreement shall be deemed to grant a license to Trust or TPA to use the Brands. Any references to the Brands made by Trust or TPA in their own materials are subject to prior review and approval by Anthem.
- c. Nothing contained herein shall cause any Party to be deemed an agent for service of legal process for the other Parties
- d. Anthem or an Anthem Affiliate may enter into business arrangements with certain Network Providers and Anthem may have financial interest in such Network Providers through direct ownership, partnership, joint venture or other arrangements. The business arrangements may provide practice management or other services to Network Providers that are designed to promote a more effective and cost-efficient health care delivery system that emphasizes continuous improvement and increased patient access to high quality, cost effective health care. Because of its ownership or financial interests in Network Providers, Anthem may share in the Network Provider's profits or other revenue. Any revenue received by Anthem in connection with these business arrangements shall be retained by Anthem.
- e. The Parties acknowledge that Anthem, in making decisions regarding the scope of coverage of services under the SPD, is not engaged in the practice of medicine. Providers are not restricted in exercising their independent medical judgment by contract or otherwise and do not act on behalf of, or as agents for, Anthem or the Plan.
- f. In addition to any other provision providing for survival upon termination of this Agreement, the Parties' rights and obligations under Articles 10, 11, 12, 13, 16, 17, 19, 24, 25(a), 25(c), and 26 shall survive the termination of this Agreement for any reason.
- g. Each Party shall comply with all laws and regulations applicable to their respective duties and obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by affixing the signatures of duly authorized officers.

Western Growers Assurance Trust

Anthem Blue Cross Life and Health Insurance Company

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Western Growers

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_